

CareFirst BlueCross BlueShield
10455 Mill Run Circle
Owings Mills, MD 21117

PRIVATE & CONFIDENTIAL

MEMO



To: DANIEL J. ALTOBELLO
EDWARD J. BARAN
MAX S. BELL, JR., ESQ.
JOSEPH HASKINS
SISTER CAROL KEEHAN, R.N., M.S.
ROGER C. LIPITZ
PATRICIA E. LUND, Ed.D., R.N.
ROBERT H. NAFTALY
CHARLES W. SHIVERY

FROM: DAVID D. WOLF

SUBJECT: SPECIAL MEETING OF THE STRATEGIC PLANNING COMMITTEE, JANUARY 22, 2001

DATE: JANUARY 18, 2001

An agenda and discussion materials are enclosed in preparation for a special meeting of the Strategic Planning Committee on Monday, January 22nd. The meeting is scheduled from 8:00 a.m. – 10:00 a.m. in the Boardroom of CareFirst's Owings Mills offices. The Boardroom is on the 9th floor of Building One.

If you are dialing-in for the meeting, the number is 1-888-742-8686. You will be prompted to enter a Participant Code, which is 5580885.

The meeting's purpose is to:

- ☐ Provide an update of CareFirst's geographic expansion initiative, with a focus on evaluation criteria and "doability";
- ☐ Review the process and timeline for the next steps in geographic expansion, inclusive of due diligence and solicitation of term sheets from prospective partners;
- ☐ Review particular Board issues and responsibilities related to the process.

If you have any questions, please call me at 410-998-5553.

enclosure

OCC 015942

CareFirst

Special Meeting
of the
Strategic Planning Committee

**January 22, 2001
8:00 a.m. - 10:00 a.m.**

OCC 015943

Special Meeting of the Strategic Planning Committee

January 22, 2001, 8:00 a.m. to 10:00 a.m.

**at
CareFirst, Inc. Owings Mills Offices
9th Floor Boardroom**

Agenda

Ben Adams (CSFB)
Daniel Altobello
Max Bell
Mark Chaney
Greg Devou

Attendees:

Elizabeth Grieb (PMRW)
William Jews
Leon Kaplan
Paul King
Larry Levine (CSFB)
Roger Lipitz

Pat McMullan (CSFB)
Michael Muntner (CSFB)
John Picciotto
Charles Shivery
Sharon Vecchoni
Dave Wolf

Conference Call:

Edward Baran
Joseph Haskins
Sister Carol Keehan

Patricia Lund
Robert Naftaly
Stuart Smith (CSFB)

- | | |
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| 1) Board of Directors' Responsibility | Picciotto |
| 2) Status Update of Partnership Discussion | Jews |
| 3) Evaluation Criteria <ul style="list-style-type: none"><input type="checkbox"/> Strategic Fit, Governance, Economics, Implementation Success<input type="checkbox"/> "Do-Ability" | Credit Suisse, First Boston
Picciotto |
| 4) Process & Timeline | Credit Suisse, First Boston
& Jews |
| 5) Board Issues | Jews |
| 6) Next Steps | Jews |



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MEMO



To: *CareFirst, Inc. Strategic Planning Committee:*
Charles W. Shivery, *Chairman*
Edward J. Baran
Max S. Bell, Jr., Esq.
Sister Carol Keehan, R.N., M.S.
Roger C. Lipitz
Patricia E. Lund, Ed.D.
Robert H. Naftaly
Joseph Haskins, *Chairman of the Executive Compensation Committee*
Daniel J. Altobello, *Chairman of the Board*

From: John A. Picciotto, Esq. *JAP*
EVP & General Counsel

Subject: Opinion from Piper, Marbury, Rudnick & Wolfe

Date: January 17, 2001

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Attached is an Opinion from Piper, Marbury, Rudnick & Wolfe, counsel to CareFirst, Inc. and its subsidiaries, describing the fiduciary obligations of Board members in the matter of potential strategic initiatives which have been discussed over the last several months.

Although the document is lengthy, I thought it important for the Boards to have a complete summary of the basic principles in each jurisdiction as well as the specific requirements it needs to consider in the transaction being considered. In that regard, pages 1-7 describe the general fiduciary obligations of Boards and pages 7-16 summarize the specific requirements for the proposed transaction. There is also a chart that summarizes those requirements.

Elizabeth Grieb, Esq., a partner with Piper, will be at the January 22, 2001 Strategic Planning Committee meeting to summarize the Opinion and answer any questions you may have.

JAP:ljm
Enclosure

OCC 015945

MEMORANDUM

To: John A. Picciotto
From: Piper Marbury Rudnick & Wolfe
Date: January 16, 2001
Subject: Fiduciary Duties of Directors in connection with possible business combination

Blue Cross and Blue Shield plans are rapidly merging with one another and converting to for-profit status. There are now approximately 50 Blue Cross and Blue Shield plans in the United States, although that number is continuing to shrink. Since 1994, five plans have converted or are trying to convert to for-profit status, 47 run for-profit subsidiaries, and 30 are merging with other plans.

This memorandum addresses the fiduciary duty issues involved in connection with a possible transaction between CareFirst and another Blue Cross and Blue Shield plan. After a discussion of fiduciary duties in general and some relevant case law, we will highlight relevant statutes from the affected jurisdictions and discuss the fiduciary duty issues raised by those statutes. In Part II we will discuss additional case law bearing on the approach taken by Attorneys General in regulating nonprofit entities and the implications this has on defining a director's duties. While the case law covers judicial decisions from a variety of states, the statutory discussion involves only the laws of the jurisdictions in which CareFirst and its subsidiaries are licensed to do business: the States of Maryland and Delaware, the District of Columbia and the Commonwealth of Virginia.

I. Fiduciary Duties in General

In general, the guiding principle of fiduciary duty is that directors must act in good faith, with the reasonable belief that their acts are in the best interest of the corporation, and with the care that an ordinarily prudent person would use under similar circumstances. There is a rebuttable presumption that director action complies with this standard. This general statement of fiduciary duty can be broken down into the Board's general oversight responsibilities and into the duties of care and loyalty/fidelity owed by the Board.

A. General Oversight Responsibilities

Under Maryland, Delaware, District of Columbia and Virginia law, the business and affairs of a corporation shall be managed by or under the direction of a board of directors.¹ This oversight role of the board includes (i) approving operating, financial and other corporate plans and strategies, (ii) evaluating the performance of the corporation, (iii) selecting, evaluating and fixing compensation for senior management of the corporation, and (iv) adopting policies of corporate conduct and practice to provide for compliance with laws, orders and regulations, for provision of financial and operation information to the board and senior management and for maintenance of accounting and other internal controls.

B. Duties

The basic duties of the directors of a corporation generally include a duty of care and a duty of loyalty.

1. Duty of Care

The duty of care requires a director to be diligent and prudent in managing the corporation's affairs and to discharge his/her duties on an informed basis with due care. A director must inform himself of all material information reasonably available to him before making a business decision.² Once informed, a director must act with requisite care in discharging his/her duties. The level of care required rises with the significance of the decision being made.

¹See 8 Del. Code Ann., Gen. Corp. Law, § 141(a) (2000); D.C. Code § 29-332 (2000); Md. Code Ann., Corps. & Ass'ns, § 2-401 (2000); Va. Stat. Ann. §13.1-673 (2000).

² See Notes/Annotations to 8 Del Code Ann., Gen. Corp. Law, § 141 (discussing the duty of care under Delaware case law); Md. Code Ann., Corps. & Ass'ns., § 2-405.1(a)(setting forth the Md requirements that a director perform his/her duties (1) in good faith, (2) in a manner he or she reasonably believes to be in the best interest of the corporation, and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances); Va. Stat. Ann. § 13.1-690 and the accompanying notes/annotations. Neither the D.C. Code nor D.C. case law contains any direct references to the duty of care. The only case law in D.C. that mentions it involves cases where the courts are interpreting the law of other states.

In the context of a possible merger of the company, the duty of care would require a director to regularly attend and participate in meetings, review and contribute to meeting agendas, timely request and review sufficient information to be properly informed about the merger and make responsible inquiry when circumstances warrant. Each director should exercise his or her independent judgment on all corporate decisions.

a. Reliance on information from others

A director may rely on information and reports from (i) an officer or employee whom the director reasonably believes to be reliable and competent in the matters presented, (ii) a lawyer, public accountant or other person, as to matters which the director reasonably believes to be within the person's professional or expert competence, and (iii) a committee of the board on which the director does not serve as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.³ However a director may not rely on such information or reports if the director has knowledge that would make such reliance unreasonable.⁴

Note that directors may not avoid active and direct oversight duties by relying on others on significant matters, including a merger or other sale or corporate control. A director relying on others should exercise diligence to ensure that such reliance is reasonable by keeping informed of the efforts of those to whom work has been delegated. For example, a director who is not a member of a committee cannot simply rely upon the existence of the committee to satisfy his or her duty of care.⁵

b. Business Judgment Rule

The Business Judgment Rule protects directors who exercise good faith judgment from liability arising from an unwise or unsuccessful corporate action resulting from a

³8 Del. Code Ann. §141(e)

⁴ Md. Code Ann. Corps. & Ass'ns §2-411(d).

⁵ The standard is somewhat more strict in D.C. where D.C. Code §29-337 allows the Board to create committees and delegate powers thereto but such delegation does not relieve the Board of any responsibility imposed by law. Moreover, the D.C. Statute does not explicitly permit reliance on the opinion of experts such as lawyers or public accountants.